is never admissible unless there is some logical connection between the two, from which it can be said the one tends to establish the other" and held that there was none in this case. And the court further said: "It is suggested, and pressed by way of argument that although the trial court may have erred in allowing this proof, yet the case being so clearly made out by other evidence and the defense so utterly futile, the error should be held harmless. If the punishment for the crime of murder in this State was death, the point would be entitled to weight. If it was within the province of the court to assume that the jury would have inflicted the death penalty because the proof of guilt justified it, or if our decision was to affect this case alone, we might hesitate to order a reversal on this theory. * * * Every defendant on trial for that crime is entitled to the full benefit of that Statute. When all else has failed him, he has a right to stand before a jury, unprejudiced by incompetent evidence, and appeal to them to spare his life. It is impossible for us to know what they would have done but for the introduction of this incompetent evidence, much less is it our province to say what they should have done and no opinion is expressed on that subject. * * * We are required to settle a rule of evidence in criminal trials, not merely with reference to this case but in consideration of future consequences," and they reversed the judgment of the trial court. It is true that proof of rape is more apt to inflame and prejudice the mind of a jury than proof of abortion, but it goes without saying that it is only a matter of degree of prejudice, not that one has and the other has not an effect upon the jury. The decision in the principal case appears to overrule *Farris* v. *People, supra,* and to establish a new policy of Appellate Criminal Law in Illinois similar to that announced by the Criminal Court of Appeals of Oklahoma, in the case of *Byers* v. *Territory,* 24 Okla. 811, 103 Pac. 532, in which on an appeal from a conviction for murder the court refused to reverse the decision of the lower court saying: "The guilt of the defendant was the only rational conclusion at which the jury could arrive" and therefore the admission of the evidence objected to was harmless error.

EQUITY—SUBROGATION OF MORTGAGOR TO RIGHTS OF MORTGAGEE.—Plaintiff arranged to exchange certain lands for a stock of goods belonging to X who, needing money, asked plaintiff to procure a loan of $3,000 on the lands, and turn the money over to him. Plaintiff did so, giving his personal note and a trust deed to secure the loan. Plaintiff then conveyed the lands to X subject to the trust deed, and X reconveyed them to the defendant by a conveyance which contained no clause making the defendant personally liable for the debt, but did contain a clause showing that the conveyance was subject to the trust deed. For the purpose of protecting his interests, plaintiff subsequently paid the note and took an assignment of the trust deed, which he now seeks to foreclose, claiming that he is subrogated to the rights of the original grantee of the trust deed. *Held,* that defendant will not be heard in equity to oppose or defeat the right of the plaintiff, who has paid the debt, to be subrogated to the rights of the grantee in the trust deed. *Kay* v. *Castleberry* (Ark. 1911) 139 S. W. 645.

This case presents the rather novel question of whether the original grant-

or of a trust deed who has sold the property without providing specifically for the personal liability of the grantee for the debt, may pay that debt and still retain his right of subrogation. The general rule denies to an uninterested party or volunteer who pays the debt, the right to subrogation. *Binford* v. *Adams,* 104 Ind. 41, 3 N. E. 753. On the other hand, one who has some interest which he can protect only by the payment of a debt, may pay this debt and be subrogated to the rights of the original mortgagee. EATON, EQUITY, p. 512. In the principal case, the court holds that since the plaintiff was personally liable for the debt, he had a right to pay it without entirely extinguishing it and releasing the lien on the property. Nor should he be considered a mere interloper but should have a right of subrogation equal to that of any third person who had paid the debt under like circumstances and equity will not permit the grantee to question this right even though no personal liability was fastened upon the grantee by the conveyance. The court says, "By accepting the deed containing the clause quoted in the statement (that the transfer was subject to the trust deed), appellant was advised of the conditions specified therein, and he should not be heard now in a court of equity to say that the property contained in the deed of trust should not be subjected to the payment of the debt for which it was pledged. The facts showed that he purchased, knowing that the debt secured by the deed of trust was to be deducted from the purchase price."

EVIDENCE—ADMISSIBILITY OF STATEMENTS IN CORROBORATION OF TESTIMONY OF DISCREDITED WITNESS.—Plaintiff sued and recovered upon a policy of fire insurance issued by the defendant company. In the course of the trial an affidavit made by one of the defendant's witnesses prior to the time of trial, containing statements contradictory to the testimony given by him on the trial, was introduced for the purpose of discrediting him. To offset the effect of this affidavit, the defendant's counsel offered another affidavit of the witness, which was in accordance with his testimony on the trial, and which had been made at a time prior to that of the affidavit introduced. This second affidavit was rejected by the court and the ruling was assigned as error. *Held,* the rejection of the affidavit was not error. *Queen Ins. Co.* v. *Van Giesen* (Ga. 1911) 72 S. E. 41.

As to the admission in evidence of prior statements consistent with the testimony of a witness when other statements of that witness inconsistent with his present testimony have been presented to the court, the decisions in the different courts are by no means uniform. The federal courts adhere to the rule as given in the case above, and hold that evidence is not admissible that the witness gave the same account out of court, although it has been shown in order to contradict him that he had given a different account. *U. S.* v. *Holmes,* Fed. Cas. No. 15,382. This rule has been adopted in the following cases: *State* v. *Vincent,* 24 Iowa 570; *Ware* v. *Ware,* 8 Me. (8 Greenl.) 42; *Commonwealth* v. *Jenkins,* 10 Gray 485; *Cincinnati Traction Co.* v. *Stephens,* 75 Ohio St. 171. In *People* v. *Doyell,* 48 Cal. 85, it was held that only in case the statements offered in corroboration of the testimony of the discredited witness had been made by him before he could foresee their effect were such statements admissible, but in *People* v. *Wright,* 4 Cal. App. 704, it was laid